

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
(at Knoxville)

UNITED STATES OF AMERICA,)	
)	Criminal Action No. 3: 12-80-DCR-001
Plaintiff/Respondent,)	and
)	Civil Action No. 3: 13-644-DCR
V.)	
)	
JULIO C. ALLEN,)	MEMORANDUM OPINION
)	AND ORDER
Defendant/Movant.)	

*** **

This matter is pending for consideration of Defendant/Movant Julio C. Allen's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. [Record No. 60] On January 14, 2013, Allen pleaded guilty to the one-count Indictment that charged him with being a felon in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1). [Record No. 20] He was subsequently sentenced to a 72-month term of imprisonment, to be followed by a term of supervised release of three years. [Record No. 58]

On October 2, 2013, the defendant filed a Notice of Appeal challenging his sentence. [Record No. 59] That appeal remains pending before the Sixth Circuit. Two weeks later, Allen also filed a § 2255 motion with this Court, seeking to collaterally attack his sentence. [Record No. 60] However, "in the absence of extraordinary circumstances, a district court is precluded from considering a § 2255 application for relief during the pendency of the applicant's direct appeal." *Capaldi v. Pontessso*, 135 F.3d 1122, 1124 (6th Cir. 1998). This matter presents no such circumstances. Accordingly, it is hereby

ORDERED as follows:

1. Defendant/Movant Julio C. Allen's motion to vacate, set aside, or correct the sentence previously entered in this action [Record No. 60] is **DENIED**, without prejudice.
2. The habeas action [Civil Action No. 3: 13-644-DCR] is **DISMISSED** and **STRICKEN** from the Court's docket.
3. The Court **CERTIFIES** that any appeal of this Memorandum Opinion and Order would be frivolous and not taken in good faith. Any request for leave to proceed *in forma pauperis* on appeal will be **DENIED**. See 28 U.S.C. § 1915(a)(3); Rule 24 of Appellate Procedure.
4. This Court **DECLINES** to issue a Certificate of Appealability on any issue raised in Defendant/Movant Julio C. Allen's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Any request by Defendant/Movant Julio C. Allen for this Court to issue such a Certificate will be **DENIED**.

This 28th day of October, 2013.



Signed By:

Danny C. Reeves

DCR

United States District Judge